

ATTACHMENT A

When Recorded Return To:

RETURN TO:
Lila Madden (Linda Lorbeer)
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

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OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20030893993 07/09/2003 13:17,
Electronic Recording
8693-49-1-1--

REDEVELOPMENT AGREEMENT

C.O.S. Contract No. 2003-115-COS

THIS REDEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 3rd day of July, 2003, by and between the City of Scottsdale, an Arizona municipal corporation ("City") and Los Arcos Development, LLC, a Delaware limited liability company ("Developer").

RECITALS

A. City has authority under A.R.S. 9-500.01 et seq., A.R.S. 36-1471, et seq., and other applicable statutes and laws (collectively the "Development Laws") to enter into agreements relating to the development and redevelopment of real property within City's territorial boundaries.

B. By City Resolution No. 4424 dated December 18, 1995, City created the Los Arcos Redevelopment Area (the "Area"). The boundaries of the Area are depicted on the drawing attached hereto as Exhibit "A."

C. By Resolution No. 4568 dated July 2, 1996, City adopted a plan for redeveloping the Area. The plan (the "Plan") is attached hereto as Exhibit "B."

D. Pursuant to A.R.S. § 36-1480, City invited the public to submit proposals for redeveloping all or part of the Area consistent with the Plan.

E. Developer submitted a proposal to redevelop a portion of the Area, and the redevelopment contemplated by this Agreement is generally consistent with that proposal.

F. Developer proposes to redevelop certain real property (the "Property") located within the Area at the southeast corner of Scottsdale Road and McDowell Road on the terms and conditions of this Agreement and generally consistent with the Plan.

G. The objective of this Agreement is to achieve the redevelopment of the Property in accordance with this Agreement and in furtherance of the health, safety, morals and welfare of the citizens of Scottsdale and of the public in general.

H. The development and redevelopment required by this Agreement will result in improvements to, and new uses of, the Property and adjacent properties and will benefit the City and the public in general. This Agreement is entered into pursuant to the Development Laws. Without limiting the foregoing, the parties acknowledge that City and the public will realize substantial tangible and intangible benefits directly and indirectly from Developer's performance of

its obligations under this Agreement. Without limitation, such benefits include the redevelopment of a key commercial area within the City of Scottsdale, increased tax revenues, facilitation of the redevelopment of adjoining areas, expansion and improvement of available public parking and transportation facilities, and elimination of impediments to redevelopment within the territorial boundaries of the City and other benefit to the public in general.

I. This Agreement is consistent with the portions of City's general plan applicable to the Property on the date of this Agreement.

J. The Property is comprised of various tracts of real property (the "Tracts") existing as of the date of this Agreement. The approximate configurations of the Tracts are depicted on the map (the "Tract Map") attached hereto as Exhibit "C".

K. As of the date of this Agreement, City owns certain easements, rights-of-way and other real property interests in the Property (collectively the "Old Public Interests"). Notwithstanding anything contained in this Agreement or any document related to this Agreement, the Old Public Interests are not part of the Property for purposes of this Agreement, are not affected in any way (by the doctrine of merger or otherwise) by this Agreement or the conveyances under this Agreement, and shall survive all conveyances and other performances under this Agreement.

L. Certain litigation (the "Sisson Lawsuit") is currently pending in Maricopa County Superior Court. The Sisson Lawsuit is Case No. CV2001-021-416, captioned Sisson v. City of Scottsdale.

M. As of the date of this Agreement, the Property is unimproved.

N. Pursuant to this Agreement, various interests in the Tracts will be conveyed so that the Property is reconfigured into various tracts of real property (the "Parcels") as depicted on the diagram (the "Parcel Map") attached hereto as Exhibit "D".

O. Under this Agreement, Tracts are tracts of land that existed prior to this Agreement and Parcels are tracts of land as the Property will be divided and developed pursuant to this Agreement.

P. The Tract Map depicts the configuration of the Tracts comprising the Property as they exist as of the date of this Agreement. The Parcel Map depicts the general configuration of the Parcels comprising the Property as they will exist after giving effect to the conveyances described in this Agreement and as they are to be redeveloped by Developer pursuant to this Agreement, subject to the adjustments to the boundaries of the Parcels contemplated by the Memorandum of New Legal Descriptions.

Q. The names and legal descriptions of the proposed Parcels are as given on a certain memorandum of parcel legal descriptions (the "Memorandum of New Legal Descriptions") in the form attached hereto as Exhibit "E" between City and Developer of even date with this Agreement and recorded simultaneously with this Agreement.

R. Subject to the provisions of this Agreement, Developer shall construct a regional retail power center and related structures, streets, buildings, and other facilities (collectively the "Project") upon and near the Property, all as depicted on the drawing (the "Conceptual Site Plan") attached hereto as Exhibit "F".

S. The Project includes the following items (the "Components"):

1) Large retail buildings (collectively the "Anchor Buildings") as follows:

a) A single story building (the "North Anchor Building") containing not less than 121,000 gross square feet of first class, modern, retail store space (together with not less than 24,000 square feet of additional outdoor garden center) upon the North Anchor Parcel, all as shown on the Conceptual Site Plan.

b) A single story building (the "West Anchor Building") containing not less than 183,000 gross square feet of first class, modern, retail store space (together with not less than 13,000 square feet of outdoor garden center) upon the West Anchor Parcel, all as shown on the Conceptual Site Plan.

c) A single story building (the "East Anchor Building") containing not less than 123,000 gross square feet of first class, modern, retail store space upon the East Anchor Parcel, all as shown on the Conceptual Site Plan.

2) Smaller retail buildings (collectively the "Shops Buildings") as follows:

a) Two single story buildings (the "Corner Shops") containing not less than 22,000 gross square feet of first class, modern, retail store space upon the Corner Shops Parcel, all as shown on the Conceptual Site Plan.

b) A single story building (the "Restaurant") containing not less than 5,000 gross square feet (including exterior enclosed seating) of first class, modern, restaurant space upon the Restaurant Parcel, all as shown on the Conceptual Site Plan.

c) A single story building (the "South Shops") containing not less than 3,000 gross square feet of first class, modern, retail store or restaurant space upon the South Shops Parcel, all as shown on the Conceptual Site Plan.

d) A facility for sales of gasoline and other automotive products and possibly other retail uses on the Gas Station Parcel.

3) A first class modern two level above ground parking structure (the "Parking Structure") containing not less than 950 parking spaces on the upper level and 1,100 parking spaces on the lower level and related access and maneuvering and landscaped areas located on the Parking Structure Parcel, as shown on the Conceptual Site Plan.

4) Surface parking lots (collectively the "Parking Lots"), subject to changes as may be required by City's governmental and other review and approval rights pertaining thereto, as follows:

a) A surface parking lot (the "Northeast Parking Lot") currently planned for 61 parking spaces and related access and maneuvering and landscaped areas located on the Northeast Parking Lot Parcel, as shown on the Conceptual Site Plan.

b) A surface parking lot (the "Northwest Parking Lot") currently planned for 113 parking spaces and related access and maneuvering and landscaped areas located on the Northwest Parking Lot Parcel, as shown on the Conceptual Site Plan.

c) A surface parking lot (the "West Parking Lot") currently planned for 38 parking spaces and related access and maneuvering and landscaped areas located on the West Parking Lot Parcel, as shown on the Conceptual Site Plan.

d) A surface parking lot (the "Southeast Parking Lot") currently planned for than 147 parking spaces and related access and maneuvering and landscaped areas located on the Southeast Parking Lot Parcel, as shown on the Conceptual Site Plan.

e) A surface parking lot (the "East Parking Lot") currently planned for 379 parking spaces and related access and maneuvering and landscaped areas located on the East Parking Lot Parcel, as shown on the Conceptual Site Plan.

5) An open air pedestrian and vehicular street system and associated upgraded lighting, street furniture, plaza, landscaping, pavements and other appurtenances (collectively the "Street Improvements") extending throughout the Project and linking the various components of the Project into a single destination shopping area as depicted on the Conceptual Site Plan.

6) Installation, refurbishment, repairs, relocations and upgrades (collectively the "Utility Improvements") to storm drainage, water, sewer, irrigation, electrical, natural gas, telecommunications, cable television, and all other utilities used or affected by the Project adequate to serve and protect the Project without restricting existing or projected use by surrounding neighborhoods, all as shown on the Conceptual Site Plan.

7) All other improvements and other facilities (the "Other Design Items") as may be necessary to operate the Property in the manner contemplated by this Agreement as a first class regional shopping attraction.

T. City plans to construct certain improvements consisting of upgraded landscaping and related amenities along the south side of McDowell Road adjacent to the north side of the Property and along the east side of Scottsdale Road adjacent to the west side of the Property; however, construction of such improvements is not part of this transaction.

U. Soon after the date of this Agreement, the parties desire to record this Agreement and record certain other documents affecting the Property (the "First Closing").

V. Before Developer commences constructing the Project, the parties desire that certain regulatory approvals (the "Regulatory Approvals") be issued with respect to the Project.

W. After completion of the Regulatory Approvals, but before Developer commences constructing the Project, the parties desire to record certain other documents affecting the Property (the "Second Closing").

X. This Agreement contemplates that Developer complete the Project, except for the Restaurant and the South Shops, no later than December 31, 2005 (the "Completion Deadline") and cause three "big box" national credit volume retail stores qualifying under the requirements of this Agreement (the "Qualifying Anchors") to open stores to the public in each of the Anchor Buildings in the manner contemplated by this Agreement no later than the date (the "Opening Deadline") that is sixty (60) days after the Completion Deadline.

Y. After Developer's proper and timely completion and commencement of operation of the Project, the parties desire to accomplish certain additional conveyances described in this Agreement (the "Third Closing").

Z. Among other things, at the Third Closing Developer shall convey to City fee title to the Parking Structure Parcel and certain other Parcels as provided herein.

AA. Also at the Third Closing, City shall grant to Developer a lease (the "Parking Lease") to operate, maintain, repair and perform certain other obligations with respect to the Parking Structure Parcel and certain other Parcels.

BB. The Project shall be operated as a first class "big box" shopping environment together with smaller retail shops.

CC. The parties desire to impose upon Developer's interests in certain portions of the Property certain restrictive covenants (the "Ongoing Restrictions") comprising conditions, covenants and restrictions running with the land in favor of City.

DD. This Agreement, along with the other documents required by this Agreement (collectively the "Related Documents"), are intended to impose upon Developer and Developer's interests in the Property all of the following:

- 1) The responsibility to cause to be constructed at no expense to City the entire Project upon the Property consistent with this Agreement within the time periods established by this Agreement, subject to all limitations and conditions set forth in this Agreement.
- 2) The responsibility to cause to be paid, at no expense to City, all amounts to City and to third parties under this Agreement, and all other expenses and costs of every description, whether "hard", "soft", or otherwise connected with or arising in any manner out of redevelopment, ownership and use of the Property.
- 3) The Ongoing Restrictions.
- 4) Certain other responsibilities hereafter described.

EE. This Agreement and the related documents are not intended to impose on City any obligations other than to perform the following, subject to all limitations and conditions set forth in this Agreement:

- 1) Participate in certain real estate conveyances as described in this Agreement.
- 2) Make certain limited financial contributions (the "City Investments") to Developer out of a portion of the transaction privilege taxes generated by the Project but only after Developer causes construction of the Project as specifically set forth in this Agreement, and in any event not to exceed Thirty Six Million Seven Hundred Fifty Thousand Dollars (\$36,750,000) (the "Maximum Investment Amount") plus interest as provided herein. Developer acknowledges that, although such projections are not a part of this Agreement and are not binding on City, Developer's current projections reflect that it will receive only \$31,750,000 hereunder and that additional amounts will be subject to the Project producing more revenue than Developer currently projects.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and representations contained herein, Developer and City agree as follows:

I. TERM OF AGREEMENT AND EFFECT OF CLOSING CONDITIONS

1. Terms and Conditions. The term of this Agreement shall be as follows:

1.1 Commencement. The term of this Agreement shall commence on the date of this Agreement.

1.2 Normal Expiration. Except as otherwise expressly provided herein, this Agreement shall continue until all obligations and rights of the parties under this Agreement have been performed, terminated or have expired.

1.3 Notice of Termination. Upon termination of this Agreement, Developer and City shall execute, acknowledge and record a confirmation that this Agreement has been terminated, except for those representations, warranties, indemnities and other matters which this Agreement states shall survive the expiration or termination of this Agreement.

1.4 Effect of Termination or Expiration. Except as otherwise expressly stated in any of the Related Documents, termination or expiration of this Agreement will have no effect on the various rights, obligations, interests and conveyances under any of the Related Documents that are recorded prior to termination or expiration, all of which shall survive termination or expiration of this Agreement and continue to be enforceable according to their terms. Any notice of termination or expiration of this Agreement shall so state.

1.5 First Closing Conditions. The First Closing shall not occur until the following conditions (the "First Closing Conditions") have been satisfied. The First Closing Conditions shall be deemed satisfied if and only if all of the following First Closing Conditions are satisfied or waived by City's notice as of the First Closing Date. The First Closing Conditions are that the City Council of City has approved this Agreement and City and Developer have executed and acknowledged this Agreement.

1.6 Second Closing Conditions. The Second Closing shall not occur until the following conditions (the "Second Closing Conditions") are satisfied. The Second Closing Conditions shall be deemed satisfied if and only if all of the following occur:

1.6.1 The Regulatory Approvals are accomplished by the appropriate authorities on or before January 31, 2005 (the "Regulatory Date"). The Regulatory Approvals are listed on Exhibit "G" attached hereto.

1.6.2 The portions of the Property intended to be conveyed to City at either the Second Closing or the Third Closing are free at the Second Closing of any environmental hazards, excluding environmental hazards that may affect the Property as of the date of this Agreement and may be specifically approved by City in this Agreement, if any.

1.6.3 Developer enters into an agreement (the "Church Agreement") reasonably acceptable to City pursuant to which Los Arcos United Methodist Church (the "Church"), the owner of the real property located directly east of the Southeast Parking Lot Parcel, agrees to release any

right, title or interest, including without limitation any rights of use, in or to the East Parking Lot Parcel (or any other portion of the Property other than the Southeast Parking Lot Parcel) in exchange for confirmation of the right of Church to use of the Southeast Parking Lot Parcel and confirmation of the right of Church to vehicular and pedestrian access to the Southeast Parking Lot Parcel through the 74th Street alignment (whether 74th Street is abandoned, modified or re-aligned).

1.7 Third Closing Conditions. The Third Closing shall not occur until the following conditions (the "Third Closing Conditions") are satisfied. The Third Closing Conditions are that:

1.7.1 Developer causes the completion of construction of the Project in the manner required by this Agreement prior to the Completion Deadline (except that actual construction of the Restaurant and the South Shops may be delayed as provided herein).

1.7.2 All three Anchor Buildings are completed and "big box" retail stores are actually occupied, operating and open for business to the public in the manner required by this Agreement prior to the Opening Deadline.

1.8 Failure of First Closing Conditions. This Agreement and all of the Related Documents shall automatically terminate if the First Closing does not occur on or before July 21, 2003 (the "First Closing Date").

1.9 Failure of Second Closing Conditions. This Agreement and all of the Related Documents shall be automatically terminated in the event any of the Second Closing Conditions are not timely satisfied or waived by notice from City on or before March 31, 2005 (the "Second Closing Date").

1.10 Termination for Failure of First Closing Conditions or Second Closing Conditions. In the event this Agreement is terminated through failure of the First Closing Conditions or the Second Closing Conditions, then all of the following shall apply:

1.10.1 If the First Closing has not already occurred, then the First Closing shall not occur.

1.10.2 The Second Closing shall not occur.

1.10.3 This Agreement shall be terminated.

1.10.4 Developer and those claiming through Developer shall have no interest in any City owned property by virtue of this Agreement.

1.10.5 City shall have no obligation to pay any City Investments.

1.10.6 Except as otherwise expressly provided herein, the parties shall have no further duties or obligations under this Agreement or any of the Related Documents.

1.10.7 The parties shall have such rights and interests in the Property as they would have had if this Agreement and the Related Documents had not been made.

1.11 Failure of Third Closing Conditions. This Agreement and all of the Related Documents other than the Second Closing R-O-W Deed shall be automatically terminated in the event any of the Third Closing Conditions are not timely satisfied or waived by notice from City.

Termination of this Agreement through failure of the Third Closing Conditions shall have the same consequences as termination for failure of the Second Closing Conditions.

1.12 Early Termination. This Agreement may be terminated by either party only to the extent a termination right may be expressly provided in this Agreement. Terminations for failure of a condition shall not excuse failure to perform express obligations required to be performed prior to such termination.

1.13 Extension. This Agreement and all deadlines for performance contained herein may only be extended by formal recorded mutual written agreement of both parties. Notwithstanding the foregoing, this Agreement and all deadlines for performance contained herein (excluding time periods for cure following notice of an Event of Default) shall be automatically extended (a) during the pendency of any referendum referring this Agreement to the approval of the voters of City and (b) during the pendency of any litigation challenging the validity or enforceability of this Agreement, but no extension due to litigation shall extend more than three (3) years. The foregoing provision regarding litigation shall not apply to any litigation filed by Developer or any person controlled by or under common control with Developer or any employee or affiliate of Developer.

II. CLOSING PROCEDURES

2. Closing Procedures. The following procedures shall govern all conveyances under this Agreement:

2.1 Title Insurer. Except as otherwise expressly provided or with the consent of the party receiving the title insurance, all title insurance policies and reports shall be obtained from Chicago Title Insurance Company (the "Title Insurer"). The party receiving title insurance shall have power to select a different title insurer reasonably acceptable to the person providing the title insurance if Title Insurer is unable or unwilling to provide any title insurance required under this Agreement.

2.2 Title Insurance. Except as otherwise expressly provided:

2.2.1 No party is required to obtain or provide title insurance under this Agreement.

2.2.2 Title Insurer's willingness to issue any title insurance not required by this Agreement is not a condition to any party's obligations under this Agreement.

2.2.3 Any party desiring to obtain title insurance not required by this Agreement shall pay all premiums, survey costs, endorsement fees and other charges of any kind or nature associated with such policy or policies.

2.3 Escrow Agent. Chicago Title Insurance Company, 2415 East Camelback Road, Suite 300, Phoenix, Arizona 85016 Attn: Rose Norton ("Escrow Agent"), shall administer transactions requiring escrow services under this Agreement. This Agreement shall constitute instructions to Escrow Agent for the transactions contemplated by this Agreement. By executing this Agreement or accepting any escrow hereunder, Escrow Agent agrees to perform the obligations imposed by this Agreement. Escrow Agent's liability under this Agreement is limited to performance of the duties and obligations imposed upon Escrow Agent. Escrow Agent shall in all cases be responsible for any liability or claim arising from its negligence, misconduct or other

improper act. When title insurance is issued in connection with a closing, Escrow Agent and Developer shall cause Title Insurer to provide to the parties to the closing an insured closing letter in form acceptable to City issued by Title Insurer's title insurance underwriter covering Escrow Agent's performances related to this Agreement.

2.4 Transactions Using an Escrow. Within five (5) business days after the date of this Agreement, City and Developer shall establish an escrow with Escrow Agent. All closings will be accomplished through escrow.

2.5 Closing Dates. Closing dates may be extended by mutual consent of City and Developer. City's city manager's authority to consent for City to extensions is limited to extensions not exceeding one hundred eighty (180) days.

2.6 Closing Location. Not less than three (3) business days prior to a closing, City shall designate a location for the closing within Maricopa County, Arizona. Unless City designates a different location, all closings shall occur in the offices of the Escrow Agent.

2.7 Closing Conditions. A closing shall occur only upon satisfaction of all conditions to that closing, or upon formal notice of waiver of any such conditions by the party for whose benefit such conditions exist, and the performance of all acts and delivery of all documents required to be performed or delivered at or prior to the closing. A party is not obligated to close if an event has occurred or circumstance exists which is (or with the passage of time or giving of notice, or both, would be) an Event of Default by the other party under this Agreement. Time is of the essence for all closings.

2.8 Escrow Fees and Closing Costs. Developer shall pay when due all escrow and termination fees, recording fees, and similar costs relating to the transactions contemplated by this Agreement.

2.9 Commissions and Fees. City shall not be liable for any real estate commissions or brokerage fees that may arise in connection with this Agreement or the transactions contemplated herein. To the extent any real estate commissions or brokerage fees may at any time be payable in connection with this Agreement, any transaction contemplated herein, or the Property, such shall be Developer's sole obligations. Developer shall pay, indemnify, defend and hold City harmless therefrom.

2.10 Other City Property. This Agreement does not entitle Developer to acquire any real property interest that is now held or may hereafter be acquired by City. City is not obligated to provide any of its own land or real estate interests for use in developing or operating the Project.

2.11 Form of Funds. City Investments shall be paid by check or wire transfer, at City's option. Except as otherwise specified, all other funds required by this Agreement shall be paid in cash, or by certified check or wire transfer.

2.12 Deliveries. Recording or other official filing of a document shall constitute delivery of the document to the grantee thereunder and acceptance by the grantee. Recorded documents shall be returned to the person designated by the forms attached to this Agreement. When no designation is made on said forms, recorded documents shall be returned to City.

2.13 Prorations. All property taxes, assessments, and similar charges for any portion of the Property conveyed to City pursuant to this Agreement applicable to the calendar year in which

such conveyance occurs or any prior calendar year, whether levied or imposed before or after any closing shall be paid by Developer.

2.14 Expenses and Deposits. The intent of this Agreement is that all real estate transactions of every description required by this Agreement or pursuant to this Agreement or in furtherance of this Agreement be accomplished without any cost whatsoever (other than costs relating to negotiation and finalization of this Agreement) to City (except that City shall pay City Investments specifically required of City as set forth in this Agreement). Upon City's request, Developer shall deposit with City from time to time any sums that City reasonably believes City will be required to expend related to real estate transactions pursuant to this Agreement. The deposit described in the preceding sentence is in addition to all other amounts Developer is required to pay under this Agreement.

2.15 Priority. All rights and interests held by City from time to time pursuant to this Agreement or pursuant to the Related Documents shall have the same priority as this Agreement. All rights and interests of City in the Property or this Agreement, or held by City from time to time pursuant to this Agreement or pursuant to the Related Documents, shall be senior in priority to any and all liens, interests or items that are created or claimed arising, conveyed, or existing after the date of this Agreement or that are subjected or subordinated to this Agreement or to any of the Related Documents. No act of Developer, City, or others, and no consent by City, shall in any way subordinate or otherwise impair City's rights or interests or deprive City's rights or interests of their senior priority. Any real property interest in the Property hereafter acquired by Developer or its affiliates shall be automatically subject and subordinate to this Agreement and regardless of the manner of acquisition. Upon request by City, Developer shall from time to time cause to be executed, acknowledged and recorded instruments confirming the same. Without request by City, Developer shall cause all recorded documents hereafter executed by Developer affecting the Project prior to the Third Closing to contain a specific reference to this paragraph of this Agreement.

2.16 Merger. All rights and interests in the Property held by City from time to time shall not merge with any existing or future title in the Property held by City or conveyed to or by City. The real property interests in the Property held by Developer shall not merge with any existing or future title in the Property held by Developer or conveyed to or by Developer.

2.17 Conveyances. All buildings and other permanent improvements located upon any portion of the Property at any time shall be part of the realty and ownership of the land upon which the improvements are located. In other words, this Agreement does not contemplate that ownership of improvements shall be separated from the ownership of the land upon which the improvements are constructed. Nevertheless, holders of leaseholds, easements or other real property interests may, to the extent permitted by this Agreement, impose mortgages, deeds of trust and other liens covering such interests and such liens shall extend to such interest holder's rights in the improvements attached to the land covered by the real estate interest in question.

2.18 Abandonments. Developer's rights to abandoned rights of way are expressly limited to the specific rights of way, if any, City conveys to Developer through the closings described in this Agreement. City has no obligation under this Agreement or otherwise to abandon any right-of-way or other property interests. In the event any other public right-of-way or other public property within or adjacent to the Property is dedicated, abandoned or otherwise acquired or disposed of by City, such property shall not accrue to Developer. In addition, and severable from the preceding sentence, upon any such event, Developer shall convey to City such right-of-way or public property reserving to Developer any then existing vehicular, pedestrian and utility access.

Any rights-of-way conveyed by City pursuant to this Agreement are exchanged in partial consideration for substitute and additional rights-of-way to be conveyed to City pursuant to this Agreement.

2.19 City Investments. Except for the City Investments, City is not obligated to pay any amount to Developer in consideration of any conveyance to City whatsoever pursuant to this Agreement.

III. FIRST CLOSING.

3. First Closing. The First Closing shall be accomplished as follows:

3.1 First Closing Date. The date of the First Closing shall be on or before the First Closing Date.

3.2 Closing Documents. On or prior to the First Closing Date, City and Developer shall sign, acknowledge, and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the "First Closing Documents"):

3.2.1 First Closing Deposits by City. City shall deposit:

3.2.1.1 The Memorandum of New Legal Descriptions.

3.2.1.2 This Agreement.

3.2.1.3 Such other funds and documents as Developer or Escrow Agent may reasonably request in order to accomplish the First Closing as required by this Agreement.

3.2.2 First Closing Deposits by Developer. Developer shall deposit:

3.2.2.1 The Memorandum of New Legal Descriptions.

3.2.2.2 This Agreement.

3.2.2.3 A document (the "Declaration") in the form attached hereto as Exhibit "H."

3.2.2.4 Instruments in substantially the form attached hereto as Exhibit "I" (the "Lienholder Consents") executed and acknowledged by each person having or claiming a lien, lease, or other monetary encumbrance or occupancy interest in the Property whereby such persons join in this Agreement and subject and subordinate their interests to this Agreement and all requirements, provisions and conveyances of this Agreement. Lienholder Consents are not required of any tenant of Developer whose lease of a portion of the Property clearly and unconditionally states that the lease expires prior to the Second Closing or provides the Developer with an absolute right to terminate without penalty prior to the Second Closing.

3.2.2.5 Funds and instruments adequate to extinguish of record all liens and other interests in the Property except for those interests which this Agreement permits to exist as of the First Closing and to allow Title Insurer to issue all title insurance which this Agreement requires in connection with the First Closing.

3.2.2.6 An amount sufficient to pay all escrow, recording and other similar fees and charges payable to Escrow Agent, Title Insurer, public offices or others in connection with the First Closing.

3.2.2.7 Such other funds and documents as City or Escrow Agent may reasonably request in order to accomplish the First Closing as required by this Agreement.

3.3 Deliveries at First Closing. The following shall occur at the First Closing in the order listed:

3.3.1 Escrow Agent shall record in the office of the Maricopa County Recorder the following First Closing Documents in the order listed:

3.3.1.1 The Memorandum of New Legal Descriptions.

3.3.1.2 This Agreement.

3.3.1.3 The Declaration.

3.3.1.4 The Lienholder Consents.

3.3.2 Escrow Agent shall deliver to Title Insurer all title insurance premiums for title insurance policies required by this Agreement for the First Closing.

3.3.3 Escrow Agent shall retain for itself Escrow Agents' escrow fee for the First Closing.

3.3.4 Escrow Agent shall record, file and deliver all other First Closing Documents required to complete the First Closing as contemplated by this Agreement.

3.4 City's First Closing Title Policy. At the First Closing, Developer shall cause Title Insurer to issue to City at Developer's expense a title insurance policy (the "First City Title Policy") as follows:

3.4.1 The policy shall be in an amount not less than \$50,000 .

3.4.2 The policy shall insure in favor of City that:

3.4.2.1 Developer owns the entire Property other than the portions owned by City.

3.4.2.2 City is a beneficiary under the Declaration and the Declaration affects the entire Property (other than portions owned by City).

3.5 First Closing Title Exceptions. The First City Title Policy shall list as exceptions only certain items specifically identified as follows (collectively the "First Closing Permitted Exceptions"):

3.5.1 The First Closing Permitted Exceptions include only the following:

3.5.1.1 The Memorandum of New Legal Descriptions.

3.5.1.2 This Agreement.

3.5.1.3 The items listed on the list (collectively, the "Ownership List") attached hereto as Exhibit "J", provided, however, that item 41 on the Ownership List shall be subordinated to this Agreement in the manner required by this Agreement at or prior to the First Closing.

3.5.1.4 Interests held by City.

3.5.1.5 Any liens or other matters for which City has specifically given notice to Developer of City's consent after the date of this Agreement but before the First Closing (such consent being either specifically contained within this Agreement or pursuant to formal notice of consent given by City). Except for the matters shown on the Ownership List or unless City's notice of consent expressly allows otherwise, the First City Title Policy must show that, regardless of City's consent, such matters are junior and subordinate to City's rights and interests under and pursuant to this Agreement and Related Documents.

3.6 First Closing Title Matters. Before the First Closing, Developer shall cause to be extinguished and released of record all title matters affecting the Property other than the First Closing Permitted Exceptions.

IV. SECOND CLOSING.

4. Second Closing. The Second Closing shall be accomplished as follows:

4.1 Second Closing Documents. On or prior to the Second Closing Date, City and Developer shall sign, acknowledge and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the "Second Closing Documents"):

4.1.1 A deed (the "Second Closing R-O-W Deed") from Developer to City in the form attached hereto as Exhibit "K" conveying to City fee simple title and ownership of the public rights-of-way and other lands that the zoning and similar processes of the City of Scottsdale require for the Project.

4.1.2 Notwithstanding anything contained in this Agreement, such other funds and documents as may be necessary to unconditionally and irrevocably waive or terminate the right of any person having or claiming an interest in the Property to object to construction or operation of the Project as required by this Agreement.

4.1.3 Funds and instruments adequate to extinguish of record all liens and other interests in the Property except for those interests which this Agreement permits to exist as of the Second Closing and to allow Title insurer to issue all title insurance which this Agreement requires in connection with the Second Closing.

4.1.4 An amount sufficient to pay all escrow, recording and other similar fees and charges payable to Escrow Agent, Title insurer, public offices or others in connection with the Second Closing.

4.1.5 Such other funds and documents as City, Developer or Escrow Agent may reasonably request in order to accomplish the Second Closing as required by this Agreement.

4.2 Deliveries at Second Closing. The following shall occur at the Second Closing in the order listed:

4.2.1 Escrow Agent shall record in the office of the Maricopa County Recorder the Second Closing R-O-W Deed.

4.2.2 Escrow Agent shall deliver to Title Insurer all title insurance premiums for title insurance policies required by this Agreement for the Second Closing.

4.2.3 Escrow Agent shall retain for itself Escrow Agent's escrow fee for the Second Closing.

4.2.4 Escrow Agent shall record, file and deliver all other Second Closing Documents required to complete the Second Closing as contemplated by this Agreement.

4.3 Second Closing Title Insurance. Simultaneous with and as a condition to City's obligation to participate in the Second Closing, Developer shall cause Title Insurer to issue to City at Developer's expense a new title insurance policy in an amount not less than \$50,000 insuring City's rights, title and interests with respect to the portions of the Property being conveyed by the Second Closing R-O-W Deed and may except from coverage only the following items (collectively the "Second Closing Permitted Exceptions"):

4.3.1 The First Closing Permitted Exceptions except that prior to the Second Closing Developer shall cause to be removed of record with respect to all of the Property the Property Ownership List items numbered 25, 26, 29, 30 through 33 inclusive, and 40 and shall cause to be removed of record with respect to the portions of the Property being conveyed by the Second Closing R-O-W Deed the Property Ownership List item numbered 41.

4.3.2 The Declaration.

4.3.3 The Church Agreement.

4.4 Second Closing Title Matters. On or before the Second Closing, Developer shall cause to be extinguished and released of record Property Ownership List items numbered 25, 26, 29, 30 through 33 inclusive, 40 and 42 with respect to all of the Property and all title matters affecting the portion of the Property conveyed by the Second Closing R-O-W Deed other than the Second Closing Permitted Exceptions.

V. THIRD CLOSING.

5. Third Closing. The Third Closing shall be accomplished as follows:

5.1 Third Closing Date. The date of the Third Closing (the "Third Closing Date") is the date thirty (30) days after the date Developer gives City formal notice that the Third Closing Conditions have been satisfied, but in no event more than thirty (30) days after the Opening Deadline.

5.2 Third Closing Documents. On or prior to the Third Closing Date, City and Developer shall sign, acknowledge and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the "Third Closing Documents"):

5.2.1 Third Closing Deposits by City. City shall deposit:

5.2.1.1 The Parking Lease, which shall be in the form attached hereto as Exhibit "L."

5.2.1.2 An amendment to the Declaration reasonably acceptable to City and Developer by which all portions of the Property conveyed to City pursuant to this Agreement are released from the Declaration.

5.2.1.3 Notices (the "Partial Termination Notices") in the form attached hereto in the form of Exhibit "M" with respect to each of the North Anchor Parcel, the West Anchor Parcel and the East Anchor Parcel.

5.2.1.4 Such other funds and documents as Developer or Escrow Agent may reasonably request in order to accomplish the Third Closing as required by this Agreement.

5.2.2 Third Closing Deposits by Developer. Developer shall deposit:

5.2.2.1 The Parking Deed, which shall be in the form attached hereto as Exhibit "N."

5.2.2.2 The Parking Lease.

5.2.2.3 The Partial Termination Notices.

5.2.2.4 An amendment to the Declaration reasonably acceptable to City and Developer by which all portions of the Property conveyed to City pursuant to this Agreement are released from the Declaration.

5.2.2.5 An assignment agreement pursuant to which Developer shall assign all of Developer's rights under the Parking Lease to an entity formed for that purpose (the "Parking Manager") and the Parking Manager shall assume all such obligations in a form reasonably acceptable to City and naming City as a third party beneficiary with respect to the assignment and assumption; City shall have no obligation to be a party to such assignment and assumption agreement.

5.2.2.6 Funds and instruments adequate to extinguish of record all liens and other interests in the Property except for those interests which this Agreement permits to exist as of the Third Closing (including any interests created by documents relating to Pre-approved Assignments so long as such interests do not affect the real property to be conveyed to City at the Third Closing) and to allow Title Insurer to issue all title insurance which this Agreement requires in connection with the Third Closing.

5.2.2.7 An amount sufficient to pay all escrow, recording and other similar fees and charges payable to Escrow Agent, Title Insurer, public offices or others in connection with the Third Closing.

5.2.2.8 The rent payable under the Parking Lease for the initial forty (40) year term thereof.

5.2.2.9 Such other funds and documents as City or Escrow Agent may reasonably request in order to accomplish the Third Closing as required by this Agreement.

5.3 Deliveries at Third Closing. The following shall occur at the Third Closing in the order listed:

5.3.1 Escrow Agent shall record in the office of the Maricopa County Recorder the following Third Closing Documents in the order listed:

5.3.1.1 The Parking Deed.

5.3.1.2 The Parking Lease.

5.3.1.3 The Parking Assignment.

5.3.1.4 The Partial Termination Notices.

5.3.2 Escrow Agent shall deliver to Title Insurer all title insurance premiums for title insurance policies required by this Agreement for the Third Closing.

5.3.3 Escrow Agent shall retain for itself Escrow Agent's escrow fee for the Third Closing.

5.3.4 Escrow Agent shall record, file and deliver all other Third Closing Documents required to complete the Third Closing as contemplated by this Agreement.

5.3.5 Escrow Agent shall disburse to City the rent payable under the Parking Lease for the initial forty (40) year term thereof.

5.4 Third Closing Title Insurance. Simultaneous with and as a condition to City's obligation to participate in the Third Closing, Developer shall cause Title Insurer to issue to City at Developer's expense a new title insurance policy insuring City's right, title and interests to the real property conveyed to City in the Parking Deed in an amount not less than \$23,260,000 and may except from coverage only the following items (collectively the "Third Closing Permitted Exceptions"):

5.4.1 The Second Closing Permitted Exceptions.

5.4.2 Any liens or other matters for which City has given notice to Developer of City's consent (such notice of consent being either contained within this Agreement or pursuant to notice of consent given by City after the Second Closing but before the Third Closing). Unless City's notice of consent expressly allows otherwise, the notice of consent shall not be effective unless such matters are junior and subordinate to City's rights and interests under and pursuant to this Agreement and related documents, and such matters are allowed only if they are junior and subordinate.

5.5 Third Closing Title Matters. On or before the Third Closing, Developer shall cause to be extinguished and released of record all title matters affecting the property interests being conveyed to City in the Third Closing other than the Third Closing Permitted Exceptions.

VI. TRANSACTION INFORMATION

6. Transaction Information. The parties shall provide to each other the following information and assurances concerning the Property and this Agreement all of which shall survive this Agreement and all conveyances pursuant to this Agreement:

6.1 City's Warranties and Representations. City warrants and represents to Developer as follows (the "City Warranties"):

6.1.1 Authority. City has full municipal power and authority to enter into, execute, deliver and consummate this Agreement.

6.1.2 Conflicts. City's execution, delivery and performance of this Agreement is not prohibited by and does not conflict with any other agreements, instruments, or judgments to which City is a party or is otherwise subject, the violation of which will have a material adverse effect on City's ability to perform its obligations under this Agreement.

6.1.3 Brokers. City has not and will not in the future engage any broker, agent, or finder in connection with this Agreement or the transactions contemplated herein.

6.1.4 Limitation on City Warranties. Notwithstanding anything in this Agreement or the Related Documents to the contrary, City does not warrant the legal effect of actions taken by City, whether set forth in recitals or otherwise in connection with this Agreement or the Related Documents.

6.2 Developer's Warranties and Representations. Developer warrants and represents to City as follows (the "Developer Warranties"):

6.2.1 Other Owners. As of the date of this Agreement and as of the First Closing Date, Developer owns fee simple title to the entire Property (except for portions owned by City), and all claims of any right, title or interest in and to all or any portion of the Property as of the date of this Agreement and as of the First Closing Date, whether under a recorded or unrecorded instrument, pursuant to an oral or written agreement, or otherwise, are listed on the Ownership List.

6.2.2 Organization. As of the date of this Agreement, Developer is a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and has qualified to do business in the State of Arizona. Developer has all requisite power and authority to enter into this Agreement and into each and every Related Document.

6.2.3 Constituents. As of the date of this Agreement, each of Developer's constituent members or other owners is a natural person with capacity to enter into contracts or a validly existing corporation, limited liability company, or limited partnership, is appropriately licensed to transact business in Arizona, and has the requisite power and authority to enter into each and every other instrument and document to be executed by them or their related entities pursuant to the terms of this Agreement.

6.2.4 Other Agreements. Developer's execution, delivery and performance of this Agreement, and of each and every other instrument and document to be executed by Developer pursuant to the terms of this Agreement, have been duly authorized by all necessary boards, managers, members, officers and directors (and by all actions required of its officers and directors) and will not violate Developer's articles of incorporation or organization or bylaws (or similar

applicable documents) or result in the breach of or constitute a default under any loan or credit agreement or any other agreement or instrument to which Developer or any constituent joint venturer, partner, member, shareholder, officer or director of Developer is a party or by any of them or by which their respective assets may be bound or affected.

6.2.5 Consents. All consents and approvals of any person (including without limitation the managers, members, officers and directors of Developer, as applicable) required in connection with the execution and delivery of this Agreement, and of each and every other instrument and document to be executed by Developer pursuant to the terms of this Agreement, have been obtained.

6.2.6 No Violation of Laws. Developer has received no notice asserting any noncompliance by Developer with any applicable statutes, codes, ordinances, rules and regulations of the United States of America, the State of Arizona or of any other state or any municipality or agency having jurisdiction over Developer, or the transactions contemplated by this Agreement, with respect to the Property or the Project, which could, as reasonably determined by City (Developer shall provide copies to City of all notices within ten business days following receipt thereof), have a material adverse effect upon Developer's performance under this Agreement. Developer is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority which could, as reasonably determined by City, have a material adverse effect upon Developer's performance under this Agreement.

6.2.7 No Payments. Developer has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of professional services such as the services of architects, engineers, attorneys and brokers to assist Developer in leasing portions of the Project to end users in the ordinary course of business, or in a permitted sale or encumbrance of the Project to the extent expressly permitted by this Agreement.

6.2.8 Litigation. No suit is pending or threatened against or affecting Developer or the Property, which could have a material adverse effect upon Developer's performance under this Agreement or under any other instrument and document to be executed by Developer pursuant to this Agreement, or the financial condition or business of Developer. The preceding sentence does not apply to the Sisson Litigation. There are no outstanding judgments against Developer which could, as reasonably determined by City, have a material adverse effect upon Developer's performance under this Agreement.

6.2.9 Attachment and Bankruptcy. There are no attachments or executions filed, pending against, affecting or involving Developer which could, as reasonably determined by City, have a material adverse effect upon Developer's performance under this Agreement. There are no assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated, filed, pending against, affecting or involving Developer.

6.2.10 No Default. There is no default, nor has any event occurred which with the passage of time or the giving of notice or both would constitute a default in any contract, mortgage, deed of trust, lease or other instrument which affects or relates to Developer's ownership of the Property or construction of improvements thereon which could, as reasonably determined by City, have a material adverse effect upon Developer's performance under this Agreement.

6.2.11 Hazardous Materials. Except as specified by the list attached hereto as Exhibit "O," to the best of Developer's knowledge, there has been no use, placement, existence, storage or disposal of any hazardous waste or materials or toxic substance upon or about the Property or any substance subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Secs. 9601, et seq. ("CERCLA"), the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). Notwithstanding the foregoing, the provisions of this Agreement dealing with Toxic Substances shall only apply to (a) Toxic Substances located on portions of the Property that will be owned by Developer following the Third Closing which could, as reasonably determined by City, have a material adverse effect upon Developer's performance under this Agreement and (b) Toxic Substances on portions of the Property that will be owned by City following the Third Closing.

6.3 Continuing Notification Obligation. The Developer Warranties must be true (and certified by Developer in a notice to City to be true) at the time of the First Closing, the Second Closing and the Third Closing. Developer shall promptly notify City in writing of any change or discovered inaccuracy in any of the Developer's Warranties, including any change in Developer's knowledge that would render inaccurate a Developer Warranty that is limited to Developer's knowledge.

6.4 Disclaimer by City. Any and all title or interests conveyed by City to Developer shall be conveyed in an "as is" condition, with no warranty, express or implied. Without limitation, the preceding sentence applies to the condition of title, the condition of improvements, the condition of the soil, geology and the presence of known or unknown contaminants or other faults or defects of any description. Developer has inspected the Property and its environs and obtained such information and professional advice as Developer has determined to be necessary related to this Agreement or the transactions contemplated herein. It shall be the sole responsibility of Developer at its expense to investigate and determine the suitability of the soil, environmental and other conditions for the development to be constructed on the Property or otherwise pursuant to this Agreement. If such conditions are not in all respects entirely suitable for the use or uses to which any Parcel will be put, then it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the soil, environmental and other conditions of the Property in a condition entirely suitable for its development.

6.5 Data from City. Any maps or other geographical, zoning, utility or other data City has provided or may provide concerning the Property, the Area, or any Tract or Parcel is provided "as is" without warranty. Developer shall independently confirm all such data.

VII. LAND ACQUISITION BY EMINENT DOMAIN

7. Land Acquisition by Eminent Domain. All responsibility for all land acquisition for the Project rests with Developer. Notwithstanding anything in this Agreement or the Related Documents to the contrary, City is not committed in any way to use condemnation or eminent domain or to assist Developer in any other way to acquire any real property interests or other rights or interests held by third parties for the Project or this Agreement.

VIII. DEVELOPER'S IMPROVEMENTS GENERALLY

8. Developer's improvements. During the entire term of this Agreement, Developer shall not cause or permit any construction or similar work to the portions of the Property to be conveyed to City pursuant to this Agreement (collectively "Developer's Improvements") except in compliance with the plans approval, construction bonding and all other requirements, provisions and processes of Exhibit "P" attached hereto. This Agreement requires Developer to comply with each and all of such provisions during the entire term of this Agreement, regardless of whether the Declaration has been executed or recorded or may otherwise from time to time and for whatever reason may not require Developer to do so. The Declaration and this Agreement shall continue to be separate documents enforceable according to their respective terms notwithstanding the incorporation of such requirements and provisions by reference. Notwithstanding the foregoing, the following provisions shall apply until the Project is completed:

IX. DEVELOPER'S INITIAL PROJECT CONSTRUCTION

9. Developer's Initial Project Construction. Subject to all limitations and conditions set forth in this Agreement, Developer shall cause the completion of construction of the Project in accordance with all requirements of this Agreement, including without limitation those relating to Developer's Improvements, and the following:

9.1 Initial Plans Approved. By entering into this Agreement, City approves only for purposes of Developer's initial Project construction under this Agreement (and not for purposes of any required City approval process, e.g. plans approval, building permits, use permits, design review approval, or any other permit or approval that would have been required in the absence of this Agreement) the design of Developer's Improvements comprising the Project to the extent set forth in the Conceptual Site Plan and other exhibits to this Agreement. To that extent, said approval partially satisfies the requirement under this Agreement that Developer obtain City's approval of plans. However, changes, modifications, refinements and particular implementations of any proposed Developer's Improvements and all other matters not shown on the Conceptual Site Plan and other exhibits to this Agreement, are subject to this Agreement's requirement that Developer obtain City's approval for all Developer's Improvements. All references in this section to City's approval shall mean and refer to City's approval under this Agreement and not any required City approval process (e.g. plans approval, building permits, use permits, design review approval, or any other permit or approval that would have been required in the absence of this Agreement). Developer acknowledges that normal City approval processes may require changes to the Developer's proposed improvements. Without limitation of the foregoing, City has not approved any abandonment of any portion of 74th Street or any other public right of way. Unless approved otherwise in writing by the City's city manager in such person's sole and absolute discretion, Developer agrees that the design review process through City shall be done on a total Project basis rather than on a Parcel by Parcel basis.

9.2 Design and Construction Professionals. All construction and plans preparation for any Developer Improvements that will be conveyed to the City from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Developer.

9.3 Project Definition. The Components shall meet all of the following requirements (which listing of requirements is not intended to be exhaustive of the improvements required to

construct the first class retail shopping center and other improvements this Agreement requires Developer to construct):

9.3.1 Project Features. Each Component comprising the Project shall comply with the requirements set forth in the chart (the "Features Chart") attached hereto as Exhibit "Q." Each Component shall have the features required by the Features Chart column titled "Required Features." Each Component shall not have the features prohibited by the Features Chart column titled "Prohibited Features."

9.4 Project Construction Schedule. Developer shall cause the entire Project to be designed and constructed according to the following schedule:

9.4.1 The schedule for the entire Project other than the Restaurant and the South Shops shall be as follows:

9.4.1.1 Developer shall cause the Qualifying Anchors to have acquired title to their respective Anchor Parcels on or before December 31, 2004.

9.4.1.2 Developer shall cause to be obtained City's approval of final plans for the entire Project and Developer shall cause construction to be commenced of each portion of the Project no later than one hundred fifty (150) days prior to the applicable Completion Deadline.

9.4.1.3 Developer shall cause each portion of the Project to be completed and certificates of occupancy to be obtained for the entire Project prior to the applicable Completion Deadline.

9.4.1.4 Each of the Anchor Buildings shall be operated by a Qualifying Anchor, the Shops shall be completed and ready for occupancy (i.e. completion of exterior building shell with major mechanical, electrical, plumbing and HVAC and interior unfinished surfaces of exterior walls), and Developer shall commence operating the remainder of the entire Project in the manner contemplated by this Agreement no later than the Opening Deadline.

9.4.2 The Schedule for the Restaurant and the South Shops shall be the same as the remainder of the Project except that the deadlines for plan approval, commencement of construction and completion of construction shall be two years after the dates applicable to the remainder of the Project.

X. CITY INVESTMENT

10. City Investment. In exchange for Developer's entering into this Agreement and performing its obligations hereunder, City shall pay to Developer the City Investments. City Investments are subject to the following terms and conditions:

10.1 Maximum Investment Amount. The aggregate total of all City Investments City shall pay pursuant to this Agreement shall not exceed the Maximum Investment Amount plus interest thereon (the "Interest Amount").

10.2 Interest Amount. The Interest Amount shall be calculated as interest on the outstanding unpaid balance of the Maximum Investment Amount at the end of each calendar year at the rate of seven and eighteen hundredths percent (7.18%) per annum commencing at the Third Closing (prorated for any partial year). Any unpaid Interest Amount at the end of a calendar year shall carry over to succeeding calendar years and shall be compounded and thereafter accrue interest to the same extent as the outstanding unpaid balance of the Maximum Investment Amount.

10.3 Application of City Investments. City Investments payments shall first be applied to any unpaid Interest Amount and then to any unpaid Maximum Investment Amount.

10.4 City Investment Installment Amount. City shall pay City Investments in quarterly installments. The amount of each installment shall be calculated by multiplying sixty-nine percent (69%) by an amount (the "Tax Collected Amount"). Each installment shall be based on the Tax Collected Amount for the preceding calendar quarter. City's obligation to make any and all City Investments shall unconditionally, completely and permanently cease for each Parcel upon each respective Parcel Termination Date, whether or not any Maximum Investment Amount or Interest Amount remains unpaid. The Parcel Termination Date for each Parcel shall be the fortieth (40th) annual anniversary of the first date on which a business located on such Parcel is open to the public for business on the Parcel, whether or not such business occupies all or any portion of such Parcel.

10.5 City Investment Installment Timing. Each quarterly installment shall accrue on the first day following the end of the calendar quarter and be payable no later than ninety (90) days thereafter. City shall pay the first installment no later than ninety (90) days following the end of the calendar quarter that includes the Third Closing.

10.6 Tax Collected Amount. The Tax Collected Amount for each calendar quarter shall be the total amount of certain sales tax revenues (the "Qualified Revenues") received by City attributable to that calendar quarter arising from Parcels that have not yet reached the Parcel Termination Date. The Tax Collected Amount for the calendar quarter when the Third Closing occurs shall include Qualified Revenues attributable to the time period from the date of this Agreement through the date of the Third Closing.

10.7 Qualified Revenues. Sales tax revenues are Qualified Revenues only if they satisfy all of the following requirements:

10.7.1 Qualified Revenues include only the unrestricted "general fund" portion of the City imposed ordinary sales tax revenues received by City. Dedicated sales taxes, such as the existing 0.2% dedicated sales tax for transportation and the existing 0.2% dedicated sales tax for preservation, as well as any and all future dedicated sales taxes, are excluded. City and Developer acknowledge that Qualified Revenues may in the future increase, decrease or cease to exist.

10.7.2 Qualified Revenues include only (a) ordinary sales taxes arising from retail sales or rental transactions occurring at the Property by or involving merchants based at the Property and reported to City by the business as having occurred at the business' Parcel at the

Property and (b) sales taxes collected by City that arise from (and are reported to City as arising from) construction of improvements on the Property from and after the date of this Agreement.

10.7.3 Qualified Revenues for a calendar quarter include only sales tax revenues for that quarter that are actually reported to and received by City during the calendar quarter for which the installment of the City Investment is due. If any Qualified Revenues are required to be refunded by City to a taxpayer following payment of a City Investment to Developer hereunder, City shall have the right to offset against future payments of City Investment hereunder the portion of such refund amount that would not have been payable to Developer if such sales tax revenues had not originally been paid.

10.7.4 Qualified Revenues exclude any revenues City receives by or through the State of Arizona or any other governmental entity, even if such revenues are actually collected by City.

10.7.5 All references to "sales tax" or "sales taxes" in this Agreement mean and refer only to City transaction privilege taxes.

10.8 Funding. City shall only be obligated to make City Investments from Qualified Revenues.

10.9 Failure to Comply With Restaurant or South Shops Deadlines. If Developer fails to comply with the deadlines in this Agreement for plan approval, commencement of construction and completion of construction of the Restaurant and/or South Shops, then, commencing with the next installment of City Investments and all subsequent installments of City Investments throughout the entire remaining term of this Agreement, (a) if a deadline applicable to the Restaurant is not complied with, all Qualified Revenues attributable to the Restaurant Parcel shall be excluded when calculating the Tax Collected Amount and (b) if a deadline applicable to the South Shops is not complied with, all Qualified Revenues attributable to the South Shops Parcel shall be excluded when calculating the Tax Collected Amount.

10.10 Interruption in Operation. In the event any Anchor Building fails to operate for a period (a "Dark Period"), then if a Dark Period extends beyond the date (the "Dark Deadline") that is four (4) years after the first day of the Dark Period, then, commencing with the next installment of City Investments and all subsequent installments of City Investments throughout the entire remaining term of this Agreement, all Qualified Revenues attributable to the Parcel (an "Excluded Anchor Parcel") upon which the Anchor Building is located shall be excluded when calculating the Tax Collected Amount.

10.11 Multiple Dark Anchor Buildings. If a Dark Period for one Anchor Building overlaps for a period of four (4) consecutive years a Dark Period for another Anchor Building, then City's obligation to pay the City Investment shall immediately, unconditionally and permanently cease as to the entire Project, whether or not any Maximum Investment Amount or any Interest Amount remains unpaid. For purposes of this section, an Anchor Building on an Excluded Anchor Parcel shall continue to be considered in determining whether there are overlapping Dark Periods under this section.

10.12 Anchor Operation. The following rules shall determine whether an Anchor Building is operating for purposes of this Agreement:

10.12.1 An Anchor Building shall be deemed to be operating only when all of the following are true:

10.12.1.1 At least eighty percent (80%) of the gross leasable area ("GLA") of the Anchor Building is occupied.

10.12.1.2 At least two thirds of the GLA of the Anchor Building is occupied by one or more Qualifying Anchors.

10.12.1.3 The Anchor Building is actually open for normal retail business to the public under the main trade name under which the Qualifying Anchor operates in the United States and is fully stocked with the Qualifying Anchor's normal store inventory.

10.13 Qualifying Anchors. Until the first annual anniversary after the later of the Third Closing or the Opening Deadline, the only Qualifying Anchors shall be Lowe's Home Improvements, Wal-Mart, and Sam's Club. From and after the first annual anniversary after the later of the Third Closing or the Opening Deadline, the following shall also be Qualifying Anchors:

10.13.1 Any retailer that, at the time it begins operating at the Project, meets all of the following requirements:

10.13.1.1 The retailer operates not less than seventy five (75) retail stores in not less than ten (10) states.

10.13.1.2 The retailer sells only new merchandise.

10.13.1.3 The retailer has current average annual gross sales for all of its retail stores during the preceding calendar year of not less than Two Hundred Dollars (\$200.00) per gross square foot of floor space, such figure to be adjusted upward annually commencing on January 1, 2004 based on changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of the adjusted figure (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number on the last adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the original Two Hundred Dollar (\$200) amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall the square footage sales figure be adjusted downward from any previous period. If the Cost of Living Index has not been published, City shall have the right to reasonably estimate the Cost of Living Index and to make the adjustments based on such estimate.

10.13.1.4 The retailer's typical minimum store size is not less than fifty thousand (50,000) gross square feet.

10.13.1.5 The retailer meets at least one of the following:

10.13.1.5.1 The retailer has a credit rating of at least "investment grade" by a national rating agency such as Moodys, Standard & Poors, and Fitch.

10.13.1.5.2 The retailer has a net worth of at least \$50,000,000 as demonstrated by the retailer's most recent audited financial statement.

10.13.2 Any other retailer that City in its sole and absolute discretion determines to be acceptable to City, but only after City directly through its city manager has given Developer formal notice of such determination and any limitations, requirements or conditions City may impose. Developer expressly agrees that this provision is inserted into this Agreement solely for City's benefit and convenience and that this Agreement was negotiated on the basis that City may make its decision on any basis whatsoever and in disregard of any interests other than City's own interests and that under no circumstances shall City ever be obligated to approve any retailer under this paragraph for any reason whatsoever or be deemed to have done so without City having given such formal notice. Such formal notice is not effective unless it specifically refers to this paragraph by number.

10.14 Subordination of Payment. City's obligation to make City Investments shall be subject to the following additional limitations:

10.14.1 City's obligation to pay City Investments is subordinate and subject to City's obligations with respect to all existing and future agreements between City and the Scottsdale Municipal Property Corporation (collectively the "Superior Obligations") and the rights of the owners of the Superior Obligations.

10.14.2 City is not obligated to make any payment under this Agreement unless full payment of amounts then due and payable on all Superior Obligations has been made or duly provided for in accordance with the terms of the Superior Obligations.

If, as a result of the application of this section, any portion of the City Investment which would have been required to be paid to Developer pursuant to this Agreement in the absence of such application is not paid, each applicable Parcel Termination Date (and the obligation of City to pay City Investment installments and to pay the Interest Amount) shall be extended as long as is necessary to cause Developer to receive all City Investment installments that Developer would have received but for the application of this section.

10.15 Funding Limitations. City may elect in City's sole and absolute discretion to make City Investments from its other funds as permitted by law and as City shall determine from time to time. Developer acknowledges that it has no claim under this Agreement to be paid from such other funds. No amount payable by City under this Agreement shall be paid out of any ad valorem taxes imposed by City or from bonds or other obligations to the payment of which City's general taxing authority is pledged, unless: (i) the same shall have been duly budgeted by City according to law; (ii) the same shall be within the budget limitations of the statutes of the State of Arizona; and (iii) any such bonded indebtedness or other obligation is within the debt and other limitations of the Constitution and laws of the State of Arizona.

10.16 Prepayments. City may prepay all or any part of the City Investments at any time without penalty.

XI. BREACH BY CITY OR DEVELOPER

11. Breach by City or Developer. The following provisions shall govern any failure by either party to comply with the provisions of this Agreement:

11.1 Events of Default by Developer. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Developer of Developer's material obligations under this Agreement:

11.1.1 If Developer shall be in arrears in the payment of any amount under this Agreement and shall not cure such arrearage within thirty (30) days after City has notified Developer of such arrearage.

11.1.2 If Developer shall fail to maintain any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be an Event of Default if within ten (10) days after notice from City, Developer provides to City the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this Agreement.

11.1.3 If Developer shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Developer's property shall be made for the benefit of creditors or if Developer is not regularly paying its debts as they come due (collectively a "Developer Insolvency"), provided, however, that an involuntary bankruptcy, receivership, insolvency or similar proceeding shall not be a Developer Insolvency so long as it is discharged or dismissed within ninety (90) days following commencement thereof.

11.1.4 If any material information required to be provided by Developer to City under this Agreement is materially false and Developer fails to provide correct information within thirty (30) days following notice to Developer.

11.1.5 If Developer does not cause to be commenced and diligently pursued to completion each required stage of construction of the Project within the times required by this Agreement. The times specified for concluding each stage of required construction have been established far enough in advance and have taken into account the likelihood of construction delays so that no cure period is provided.

11.1.6 If Developer shall fail to obtain or maintain any licenses, permits, or other governmental approvals required by applicable law and pertaining to the Property or timely pay any taxes pertaining to the Property and shall not cure such failure within thirty (30) days.

11.1.7 If Developer fails to timely perform its obligations necessary for the First Closing, the Second Closing, or the Third Closing.

11.1.8 If there shall occur an Event of Default (as defined in any of the Related Documents) by Developer or any affiliate of Developer or successor or assignee of Developer (including, without limitation, Parking Manager) under the Related Documents not cured prior to the end of any applicable cure period provided by such other documents. Any such cure periods shall run concurrently with any cure periods provided under this Agreement or any other Related Document.

11.1.9 If Developer shall fail to or neglect to timely and completely do or perform any obligation of Developer or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after City has notified Developer in writing of such failure or neglect.

11.2 City's Remedies. Subject to specific stated limitations on certain of City's remedies as hereafter provided, upon the occurrence of any Event of Default or at any time thereafter until such Event of Default is cured, City may, at its option and from time to time, exercise any or all or any combination of the following cumulative remedies in any order and repetitively at City's option:

11.2.1 Terminate this Agreement (a "Default Termination").

11.2.2 Pay or perform, for Developer's account, in Developer's name, and at Developer's expense, any or all payments or performances required hereunder to be paid or performed by Developer.

11.2.3 Abate at Developer's expense any breach of this Agreement.

11.2.4 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Developer's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by or pledged to City or any third party for the benefit or on behalf of City, pursuant to this Agreement (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement. Developer hereby irrevocably grants to City a power of attorney coupled with an interest to act for Developer in all respects with respect to any of the foregoing.

11.2.5 Be excused without any liability to Developer therefor from further performance of any or all obligations under this Agreement until the Event of Default is cured.

11.2.6 Insist upon Developer's full and faithful performance under this Agreement and upon Developer's full and timely payment of all amounts that become due from Developer during the entire remaining term of this Agreement.

11.2.7 Assert, exercise or otherwise pursue at Developer's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

11.3 Postponed Remedies. Following an Event of Default, City shall postpone exercising the Default Termination remedy (the "Postponed Remedy") for a period (the "Extended Cure Period") if Developer cures such Event of Default in compliance with all of the following:

11.3.1 The Extended Cure Period shall commence on the date that City gives notice ("Extended Cure Commencement Notice") to Developer that an Event of Default has occurred.

11.3.2 The Extended Cure Period shall end upon the date that is thirty (30) days after City gives notice to Developer of the impending termination of the Extended Cure Period, which notice shall not be given by City until the expiration of at least ninety (90) days following the Extended Cure Commencement Notice (the "Maximum Extension Period"). Notwithstanding the foregoing, if any Event of Default can be cured only by the commencement or prosecution of

litigation or arbitration (a "Proceeding") by Developer, the time period in the preceding sentence applicable as of the date that Developer files or joins in such Proceeding shall be extended automatically until the final resolution of the Proceeding on the following terms:

11.3.2.1 Developer shall give notice to City of the Proceeding and shall provide City with copies of all pleadings, motions, correspondence and other written materials provided to the court/arbitrator or any opposing party relating to the Proceeding.

11.3.2.2 Developer shall use commercially reasonable efforts to prosecute the Proceeding to successful completion as soon as possible.

11.3.2.3 Developer shall support any action by City seeking to intervene in the Proceeding.

11.3.2.4 Developer shall take any appeals from judgments or awards in the Proceeding that City reasonably requests.

11.3.2.5 Developer shall use commercially reasonable efforts to enforce the judgment or award in the Proceeding if the judgment or award is in favor of Developer, and the Proceeding shall not be deemed to have a final resolution until the Event of Default has been cured.

11.3.2.6 If the judgment or award in the Proceeding is adverse to Developer and Developer is thereby prevented from curing the Event of Default, the Extended Cure Period shall extend indefinitely until the Event of Default is cured through other means. During such indefinite extension, Developer shall have no further obligations to cure such Event of Default.

11.3.2.7 No Extended Cure Period is available more than once for any Event of Default.

11.4 Notice of Breach. Developer shall promptly give notice to City of any event or circumstance of which Developer has or acquires knowledge that is (or which with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement. Developer shall also promptly give to City notice of any notice or claim given by any third party to Developer alleging that an event or circumstance has occurred which is (or which with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

11.5 Non-waiver. Developer acknowledges Developer's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Developer under this Agreement, and no acceptance by City of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of performances hereunder shall be deemed a compromise or settlement of any right City may have for additional, different or further performances. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Developer shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent City from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by City or Developer concerning payments or other performances due hereunder, or failure by City to demand any performance hereunder, shall excuse Developer from compliance with this Agreement nor estop City (or otherwise impair

City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. DEVELOPER EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

11.6 Inspection. City shall have access to the portions of the Property then owned by Developer at all reasonable times upon reasonable notice (and at all times and without notice in the event of an emergency) for the purpose of examining such portions of the Property or exercising City's other rights hereunder. Developer shall promptly undertake appropriate action to rectify any deficiency (identified by City in writing during such inspections or otherwise) in Developer's compliance with this Agreement. This paragraph does not limit City's other rights of access to the Property elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for City inspectors or other employees and officers acting within their legal authority.

11.7 Relationship to Related Documents. This Agreement does not modify or amend the Related Documents. City's rights under this Agreement shall supplement and augment City's rights under the Related Documents. All of Developer's obligations and limitations under this Agreement are in addition to its obligations and limitations under the Related Documents.

11.8 Events of Default by City. Each and every one of the following events shall be deemed an "City Default" and a material breach by City of City's material obligations under this Agreement:

11.8.1 If City is in default under any of the Related Documents after taking into account all applicable grace, notice or cure periods.

11.8.2 If City fails to timely perform its obligations necessary for the First Closing, the Second Closing or the Third Closing after taking into account all applicable grace, notice or cure periods.

11.8.3 If City shall fail to perform or observe any other provisions contained herein on its part to be kept or performed and such failure shall continue for a period of thirty (30) days after Developer has notified City in writing of City's default hereunder.

11.9 Developer's Remedies. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR THE RELATED DOCUMENTS and as a condition of City's willingness to enter into this Agreement, and notwithstanding anything else contained in this Agreement, or contained in any exhibit attached hereto, or contained in or related to this Agreement or the Related Documents, or any instrument or agreement now or hereafter related hereto, or existing or implied at law or equity, the following limits shall apply to this Agreement, the Related Documents and all transactions related thereto:

11.9.1 In no event shall City be liable for any money damages other than payment of the actual amount of City Investments that this Agreement requires City to pay but City wrongfully does not pay.

11.9.2 Except for actual damages in the amount of the actual amount of City Investments that this Agreement requires City to pay but City wrongfully does not pay, City shall not be liable for damages but shall only be subject to specific performance, injunctive or other equitable relief.

11.9.3 City shall not be liable for any incidental, consequential, punitive, exemplary, multiple or similar damages of any kind or nature.

11.9.4 Developer hereby unconditionally and irrevocably waives on behalf of itself and all persons claiming through Developer or through this Agreement or under or related to this Agreement or the Related Documents any remedies inconsistent with these limitations.

11.9.5 All limitations on Developer's remedies shall also apply to all of City's officers, employees and other agents and representatives and any other person for whom City may in any event be liable for any reason.

11.9.6 All limitations on Developer's Remedies shall apply to Developer and to any person otherwise asserting against City any claim whatsoever related to this Agreement or the Related Documents.

11.10 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, City shall have the right to setoff and credit, from time to time and at any time, any and all amounts due to City from Developer or its affiliates or successors or assignees of Developer (including, without limitation, Parking Manager) hereunder or under the Related Documents, whether pursuant to this Agreement or otherwise, against any sum which may be due from City to Developer and affiliates pursuant to this Agreement, provided, however, that (a) no setoff or credit shall apply to obligations not arising in connection with the Project and (b) Developer shall be subrogated to any claim of City against third parties for recovery of such funds.

XII. INDEMNITY AND INSURANCE

12. Indemnity and Insurance. From the date of this Agreement until the Third Closing, Developer shall provide to City the insurance, indemnities and other risk management programs and protections described in Exhibit "R" to this Agreement.

XIV. DEVELOPER'S RECORDS

13. Developer's Records. For a period extending at least seven (7) years after the date of creation thereof, Developer will maintain in a secure place within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and information, relating in any manner to Developer's or City's rights or obligations under this Agreement as reasonably determined by City.

13.1 Standards for Records. Developer will maintain a reasonable system of accounting and shall keep and maintain all books and records pertaining to Developer's or City's obligations under this Agreement as reasonably determined by City in accordance with reasonable accounting principles.

13.2 Information. Developer shall provide, from time to time, such information, books and records as City may reasonably request and that Developer possesses or controls pertaining

to Developer's and City's respective obligations under this Agreement as reasonably determined by City.

13.3 Right of Inspection. Developer shall at Developer's expense (i) permit and assist City and its representatives at all reasonable times and in a reasonable manner (including reasonable accommodations) to inspect, audit, copy and examine, as applicable, Developer's information, books and records relevant to City's and Developer's obligations under this Agreement as reasonably determined by City and (ii) cause its employees and agents and, if City reasonably determines it to be necessary, accountants to give their reasonable cooperation and assistance in connection with the foregoing.

13.4 Media Included. Developer's records subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information, other than privileged information and internal communications that are distributed only to Developer's accountants, attorneys, officers, employees, members, partners, investors, lenders and/or affiliates.

13.5 Activity Report. Upon City's request made not more than once in any calendar quarter prior to initial Project completion and not more than twice during each calendar year thereafter Developer shall provide to City a written report (and, if requested by City, a presentation to City's governing council or designee) of the status of the Project and Developer's use of the Property. Said report shall include construction progress, land usage, marketing conditions, Property occupancy status, activity levels, commitments and plans and other matters as City may designate. Developer's obligations under this section shall terminate upon the Third Closing.

XIV. COMPLIANCE WITH LAW

14. Compliance with Law. Developer shall operate, use and occupy the portions of the Property owned by Developer in accordance with all federal, state, county and local laws, ordinances, rules and regulations as are now in effect or as may hereafter be adopted or amended. Within fifteen days following receipt thereof, Developer shall provide to City a copy of any written notice alleging any violation of any law, ordinance or regulation pertaining to the portions of the Property owned by Developer. Developer acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Developer with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Developer, the Property or Developer's use of the Property. Developer acknowledges that all of Developer's obligations hereunder are in addition and cumulative to (and not to any extent in substitution or satisfaction of) all existing or future laws and regulations applicable to Developer. The parties acknowledge that this Agreement is the only economic or other incentive from or through the City of Scottsdale applicable to the Project. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Developer expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement. Developer further agrees that this Agreement is not intended to diminish any performances to the

City of Scottsdale that would be required of Developer by law if this Agreement had been made between Developer and a private citizen. City has not relinquished or limited any right of condemnation or eminent domain over the Property. In the event of any condemnation or eminent domain brought by City involving property interests owned by Developer, Developer shall not be entitled to compensation for any value in any manner directly or indirectly attributable to this Agreement or performances related to this Agreement. This Agreement does not impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Developer or the Property. City's rights and remedies hereunder for Developer's failure to comply with all applicable laws supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental entity having jurisdiction over Developer.

14.1 Procurement Process. Developer shall cause all activity on portions of the Property owned by City or contemplated to be conveyed to City under this Agreement, including all construction, to comply in all respects with all applicable bidding and procurement laws (which, with respect to construction, shall include the selection of a construction manager at risk pursuant to A.R.S. Section 34-603), and shall pay, indemnify, defend and hold harmless City from any suits or other claims of any description related to the application of such laws to the Project. City shall have the right, but not the obligation, to determine in City's reasonable discretion how such laws apply to portions of the Property owned by City or contemplated to be conveyed to City under this Agreement. In the event City makes such a determination, Developer shall comply with such determination, but such compliance shall not affect Developer's obligation to pay, indemnify, defend and hold City harmless. Developer shall cause all such construction and related activities to be accomplished pursuant to A.R.S. Section 34-603 and City's applicable procurement laws and subject to the following:

14.1.1 Construction contracts shall be created through a selection committee established pursuant to A.R.S. Section 34-603 on which City and Developer shall have equal representation. No decision by such selection committee shall be made over the objection of either the City or the Developer representatives on such committee. Design contracts shall be created in accordance with applicable law, and City shall have the right to approve the designer for the Parking Structure.

14.1.2 The selection committee shall publish requests for qualifications of prospective construction managers as required by A.R.S. Section 34-603 and all responses to such requests shall be submitted to City for delivery to, and opening, consideration and evaluation by, the selection committee.

14.1.3 The bid or other selection processes shall result in contracts between the contractor and Developer and contracts between the designer and Developer that are in a form and contain provisions acceptable to City and Developer. City shall not be party to the contracts.

14.1.4 The contracts shall provide that:

14.1.4.1 City shall be a third party beneficiary to the contracts and all warranties, certifications and similar matters related to the contracts. Without limitation, City shall be an additional insured with respect to all insurance policies (except workers compensation) required by the contracts.

14.1.4.2 City shall not have any obligations or liabilities under the contracts.

14.1.4.3 The architect, engineer or contractor shall provide to City the same insurance coverage, indemnities and similar protections that the contract requires such architect, engineer or contractor to provide to Developer.

14.1.4.4 Developer and each architect, engineer and/or contractor shall pay, indemnify, defend and hold City harmless from any loss, harm or damage of any description arising from or relating to the contract signed by such person or performance thereunder, except to the extent such loss, harm or damage is attributable to the sole gross negligence of City or its employees.

14.1.4.5 The architects, engineers and contractors shall deliver copies of all notices claiming breach or default under the contracts to City at the same time such architects, engineers and contractors deliver such notices to Developer. Upon City's request, copies of any deliverables provided to Developer shall also be provided to City.

14.1.4.6 The architects, engineers and contractors shall allow City the same access to records as is required to be provided to Developer under the contracts.

14.1.4.7 The architects, engineers and contractors shall not do any of the following without having first received from City written notice of City's consent:

14.1.4.7.1 Delegate or assign such architect's, engineer's, or contractor's duties or the contract.

14.1.4.7.2 Amend their contract terms other than as expressly stated herein.

14.1.4.7.3 Approve any change orders that (a) reduce the contract amount or guaranteed maximum price, (b) materially change the size or appearance of the improvements or (c) exceed Fifty Thousand Dollars (\$50,000) for any one change order, provided, however, that City's approval of any such change orders shall not be unreasonably withheld or delayed and change orders required to rectify life/safety or structural integrity issues need not be approved by City prior to the work required to address such life/safety or structural integrity issues so long as the change order will not materially change the size or appearance of the improvements. Developer shall provide to City a copy of any change order not requiring City's approval within ten (10) business days after such change order is executed.

14.1.4.7.4 Publicize the contract for advertising or any other purposes.

14.1.5 City shall have the right to vary or waive any provision of this paragraph in City's sole discretion to the end that City may cause work subject to procurement requirements under this Agreement to comply with applicable procurement laws and principles as determined by City from time to time. Any such variance or waiver must be by notice executed by City's city manager or designee referring to this paragraph.

14.2 Area and Plan Amendments. City may amend the Plan and the Area boundaries from time to time without the approval or consent of Developer. However, so long as Developer is

not in default under this Agreement, any amendment to the Plan which materially interferes with the uses or improvements permitted on the Property under this Agreement and which is likely to have a material adverse financial affect upon Developer shall require the prior written consent of Developer, which consent shall not be unreasonably withheld or delayed. If Developer does not give City notice of Developer's refusal to consent within thirty (30) days after notice from City seeking Developer's consent, Developer's consent shall be deemed granted.

14.3 No Waiver. Nothing in this Article is intended to waive or shall be construed to waive any right of Developer to assert that a given law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by City or any other governmental entity is invalid or ineffective or has not been properly exercised, except that Developer does waive any right to assert that this Agreement or any of the Related Documents or any provision in any of such documents are invalid or ineffective.

XV. ASSIGNABILITY

15. Assignability. This Agreement is not assignable by Developer (and any such assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

15.1 Assignments Prohibited. Every assignment of Developer's interest in the Property or this Agreement or any of Developer's rights or interests hereunder is prohibited unless Developer first receives from City notice of City's consent to the assignment. All references in this Agreement to assignments by Developer or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to persons claiming pursuant to such transactions, circumstances and conditions:

15.1.1 Any voluntary or involuntary assignment, conveyance or transfer of the Property or any interest therein or any rights under this Agreement, in whole or in part.

15.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Property (collectively "Liens").

15.1.3 The occupation, management, control or operation of the Property or any part thereof by others.

15.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Developer not caused by the death of a shareholder or other owner.

15.1.5 Any assignment by Developer for the benefit of creditors, whether voluntary or involuntary.

15.1.6 Any bankruptcy, reorganization or death of Developer.

15.1.7 The occurrence of any of the foregoing by operation of law or otherwise.

15.1.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Developer.

15.2 Pre-approved Assignments. City hereby consents to certain assignments (the "Pre-approved Assignments") and Developer is hereby deemed to have received such consents. Only the following assignments are Pre-approved Assignments:

15.2.1 City Transfer. Any assignment or other transfer to City.

15.2.2 Parking Assignment. The Parking Assignment.

15.2.3 Lien Creation. The creation of any lien or liens, mortgage or mortgages or deed of trust or deeds of trust (a "Mortgage") upon Developer's interests in this Agreement, and/or the Property or any portion thereof (but not upon City's interest in this Agreement or the Property).

15.2.4 Mortgage Foreclosure. The transfer of all of the Developer's interests in the Property, and under this Agreement to a single purchaser, each at the foreclosure (or trustee's sale or similar enforcement) of a Mortgage.

15.2.5 Transfer of Property. The sale, lease, transfer or other conveyance of any portion of or interest in the Property then owned by Developer (on one or more occasions and with respect to one or more Parcels). Each such sale, lease, transfer or other conveyance shall be expressly subordinate to this Agreement and the Related Documents.

15.2.6 Complete Sale of Interest. Developer's complete assignment of all of Developer's rights and interests under this Agreement to a single assignee who assumes all of Developer's obligations relating thereto in a written instrument reasonably acceptable to City.

15.2.7 Assignment of Equity Interests. Assignments to any third party of any interest in Developer so long as such assignments do not materially and adversely affect Developer's ability to perform its obligations hereunder.

15.2.8 Publicly Traded Stock. The transfer of stock, regardless of quantity, if Developer is a corporation whose stock is regularly traded on a national stock exchange, or is regularly traded in the over-the-counter market and quoted on NASDAQ.

15.3 Limitations on Pre-approved Assignments. City's consent to Pre-approved Assignments is not effective until the following conditions are satisfied:

15.3.1 Developer shall provide to City reasonably satisfactory evidence establishing that the transaction constitutes a Pre-approved Assignment under this Agreement and copies of any applicable assumption documents.

15.3.2 Each Pre-approved Assignment is consistent with every requirement of this Agreement pertaining to the Pre-approved Assignment.

15.4 Assignment Remedies. Any assignment of Developer's interests in the Property or this Agreement or any of Developer's rights or interests hereunder without City's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement. City may, in its sole discretion and in addition to all other remedies available to City

under this Agreement or otherwise, and in any combination, void any such assignment, all without prejudicing any other right or remedy of City under this Agreement.

15.5 Effect of Assignment. No action (other than a consent by City) or inaction by City shall be deemed a waiver of the prohibition on assignments set forth in this Agreement, or the acceptance of an assignee as Developer, or a release of Developer from the further performance by Developer of the provisions of this Agreement. Consent by City to an assignment shall not relieve Developer from obtaining City's consent to any further assignment to the extent required by this Agreement. No assignment shall release Developer from any liability hereunder.

15.6 Enforceability after Assignment. No consent by City shall be deemed to be a novation. This Agreement shall control any conflict between this Agreement and the terms of any assignment or any document related to any assignment. No consent by City to an assignment shall be effective unless and until Developer receives notice of City's consent pursuant to this Agreement. City's consent to any assignment does not in any way expand modify this Agreement or waive, diminish or modify any of City's rights or remedies under this Agreement. City shall not be bound by any provision of any instruments relating to any assignment. Upon execution of this Agreement, and prior to each assignment, Developer shall provide a complete copy of this Agreement and any amendments hereto to each assignee.

15.7 Grounds for Refusal. Developer's rights under this Agreement are specifically made for the sole benefit of Developer and to facilitate within the Area Developer's own operation of the Project and third party uses the Project to the extent specifically permitted by this Agreement. Except for the Pre-approved Assignments, no assignment of this Agreement is contemplated or bargained for and City has the absolute right for any reason or for no reason in its sole and absolute discretion to give or withhold consent to any other assignment or to impose any conditions upon any other assignment.

15.7.1 Assignment Fee. Developer shall pay to City in advance of any request for consent to an assignment or request for an Estoppel Certificate the sum of Five Hundred Dollars (\$500) as a nonrefundable fee for legal, administrative and other expenses related to any such request, whether or not City grants such request. The foregoing fee shall not apply to any Pre-approved Assignment.

15.8 Single Assignee. City is entitled to deal with Developer or a single assignee of all of Developer's rights and obligations under this Agreement. City and Developer expressly do not intend that Developer's rights or obligations under this Agreement be divisible into multiple agreements or other arrangements requiring City to deal with more than a single assignee of Developer.

15.9 Estoppel Certificates. By notice to the other party (an "Estoppel Request"), City or Developer (the "Requesting Party") may request that the other party provide written confirmation (an "Estoppel Certificate") of any of the following matters subject to the following limitations:

15.9.1 The Estoppel Request shall specifically refer to this section of this Agreement.

15.9.2 Developer may give an Estoppel Request (i) whenever deemed appropriate by Developer but in no event more than once every six months and (ii) when a Parcel is being sold or leased or when a Mortgage on a Parcel is being created or assigned, provided the other party

(the "Estoppel Assignee") to any such sale, lease, or Mortgage executes and joins in the Estoppel Request.

15.9.3 An Estoppel Request by Developer submitted with respect to any such sale, lease or Mortgage shall describe the proposed transaction in sufficient detail to allow City to understand the proposed transaction and its affect on Developer, the Property, the Project and City.

15.9.4 The Estoppel Request by Developer submitted with respect to any such sale, lease or Mortgage must include warranties and representations by the Estoppel Assignee to the best of its knowledge that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

15.9.5 An Estoppel Request by Developer must include warranties and representations by Developer that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

15.9.6 An Estoppel Request must specify the matters the party to whom the Estoppel Request is submitted is requested to confirm. The Estoppel Request may request only confirmation whether or not the following matters are true, to the best of the actual knowledge of the party giving the Estoppel Certificate. City's actual knowledge refers to knowledge of City's General Manager - Economic Vitality, and City Manager. Estoppel Certificates are limited to the following matters:

15.9.6.1 This Agreement is in effect and has not been amended except as stated in the Estoppel Request.

15.9.6.2 City has consented or consents to the proposed transaction, if any, described in the Estoppel Request.

15.9.6.3 The identity of the holder of Developer's interests under this Agreement.

15.9.6.4 An Event of Default or any event which with the passage of time or notice or both could constitute an Event of Default by the Requesting Party does not exist (except that Estoppel Certificates shall exclude matters of zoning, regulatory compliance or other governmental or regulatory issues).

15.9.6.5 If City is the Requesting Party, that City has performed its obligations and is in compliance with this Agreement.

15.9.6.6 Neither City nor Developer has given any notices demanding compliance with this Agreement for which non-compliance then exists.

15.9.6.7 Plans for any Developer's Improvements have been approved by City to the extent described in the Estoppel Request.

15.9.7 The party receiving the Estoppel Request shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after receipt of a proper and complete Estoppel Request and such additional information as the receiving party may reasonably request relating to the proposed assignment. The Estoppel Certificate may contain such limits,

conditions and other statements as may be necessary to reflect the true status of the Project and this Agreement. An Estoppel Certificate does not amend or otherwise modify this Agreement, but may be relied upon by the requesting party and any Estoppel Assignee (subject to matters that may exist but for which the party providing the Estoppel Certificate does not have actual knowledge). An Estoppel Certificate does not bind City to any provisions of any Agreement between Developer and the Estoppel Assignee.

15.10 Consent to Assignments. Developer shall attach to each Pre-approved Assignment a copy of Developer's notice to City of the Pre-approved Assignment. Developer shall attach to each other assignment, a copy of City's notice to Developer of City's consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an assignment.

15.11 Assignments by City. City and any successor may assign or delegate its rights and/or duties under this Agreement or any agreement, document or instrument related to this Agreement in whole or in part to any redevelopment or other governmental body or agency having jurisdiction over the Property from time to time. Upon any such assignment or delegation, the assignor or delegator shall have no further liability or obligations for the rights and/or duties assigned or delegated under this Agreement or any agreement, document or instrument related to this Agreement except that City shall remain responsible for paying the City Investments to which Developer may be entitled.

XVI. MISCELLANEOUS

16. Miscellaneous.

16.1 Duration of Redevelopment Agreement Terms. Provisions incorporated into this Agreement by reference from any document related to this transaction remain in effect during the entire duration of this Agreement (and shall be interpreted as if they had been set out in full in this Agreement), regardless of whether the source document is terminated or amended, or otherwise does not require compliance with the incorporated terms. When this Agreement or the Related Documents incorporate text from another document, an amendment of the text shall not affect the document into which the text is incorporated unless the amendment specifically so states.

16.2 Amendments. This Agreement may not be amended except by a formal writing executed by City and Developer.

16.3 Affiliate. Affiliate as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person and any subsidiary, guarantor, principal, partner, shareholder, employee, agent, franchisee, officer, director, licensor, licensee, investor, or lender. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control") as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and "person" (for purposes of this definition and for purposes of this Agreement generally) means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

16.4 Survival of Covenants, Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the Closings, and all conveyances contemplated by this Agreement, and all indemnifications contained in this Agreement shall survive the rescission, cancellation, expiration or termination of this Agreement for any reason.

16.5 Years. Any reference in this Agreement to a year shall refer to a calendar year unless a fiscal year is specifically stated. Unless otherwise stated in or required by the context of this Agreement, references to a fiscal year refer to City's fiscal year. For the purposes of this Agreement, City's fiscal year shall begin on July 1 and Developer's fiscal year shall begin on January 1.

16.6 No Additional Warranties. Each party to this Agreement has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Agreement and the transactions contemplated herein. Except for the City Warranties, City has made no representation, warranty, guaranty or inducement of any kind in connection with this Agreement. Without limitation, City has made no representation, warranty, guaranty or statement of inducement regarding the value of any property, right or interest; title to any property or interest therein; the tax consequences of any transaction or the availability or the unavailability (and the benefits or lack of benefits) of any alternative transaction structure; or the enforceability of any provision of this Agreement under current or future laws. The risk that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable in any respect shall rest with the party who is the intended beneficiary of any such provision.

16.7 Limited Severability. If any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

16.8 Conflicts of Interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

16.9 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

16.10 Nonliability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

16.11 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City: David Roderique
General Manager, Economic Vitality
City of Scottsdale
7447 E. Indian School Road, Suite 200
Scottsdale, AZ 85251

Copy to: City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
Attn: City Attorney

If to Developer: Los Arcos Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, Arizona 85018
Attn: Mr. Steve Ellman

Copy to: Los Arcos Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, Arizona 85018
Attn: Mr. Bob Kaufman

And copy to: Squire, Sanders & Dempsey LLP
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Attn: Richard F. Ross, Esq.

By notice from time to time, a party may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

16.12 Time of Essence. Time is of the essence of each and every provision of this Agreement.

16.13 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Property.

16.14 Construction. Whenever the context of this Agreement requires, the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor either party.

16.15 No Setoffs. All amounts payable by Developer hereunder shall be paid in full directly to City without setoff or deduction of any description. Developer expressly waives any right of setoff.

16.16 Paragraph or Section Headings. The paragraph or section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

16.17 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans under this Agreement or any of the Related Documents, Developer's construction of improvements, Developer's negligence, Developer's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Developer), or otherwise as a result of the existence of this Agreement.

16.18 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

16.19 Attorneys' Fees. Developer shall bear all the costs, attorneys' and witness fees and other litigation costs of both Developer and City of defending or prosecuting any claim, action or suit challenging the validity or enforceability of any provision of this Agreement or the Related Documents, each party to be represented by separate counsel of its own choosing, provided, however, that Developer shall have no obligation to pay for costs, attorneys and witness fees and other litigation costs in any action in which City takes the position that this Agreement is invalid or unenforceable. In the event any other action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs, provided, however, that (a) Developer shall, as a condition of such proceeding provide evidence to City of the rate of payment of Developer's attorneys fees to its counsel and (b) City shall be entitled to recover payment for attorneys employed by City (including attorneys who are regular employees of City) on such proceeding at the same rate of payment if City is the prevailing party.

16.20 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

16.21 Institution of Legal Actions. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default or to obtain any other remedy consistent with this Agreement. Such legal actions shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

16.22 Affiliate. Affiliate as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person and any subsidiary, guarantor, principal, partner, shareholder, employee, agent, franchisee, officer, director, licensor, licensee, investor, or lender. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control") as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and "person" (for purposes of this definition and for purposes of this Agreement generally) means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

16.23 Approvals and Inspections. All approvals, reviews and inspections by City under this Agreement or otherwise are for City's sole benefit and not for the benefit of Developer, its contractors, engineers or other consultants or agents, or any other person.

16.24 Recording. Within ten (10) days after any amendment or termination of this Agreement, the parties shall cause the amendment or termination document to be recorded.

16.25 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S. § 38-511.

16.26 City Consent. Unless expressly stated to the contrary herein, any provision for consent or approval of any matter by City or any officer of City shall be in the sole and absolute discretion of City.

EXECUTED as of the date first given above.

Developer: **LOS ARCOS DEVELOPMENT, LLC,**
a Delaware limited liability company

By: Los Arcos Properties, Inc., an Ariz. corp.
Bob Kaufman

By: [Signature]
Its: General President
Bob Kaufman

City: **CITY OF SCOTTSDALE,** an Arizona
municipal corporation

By: Mary Manross
Mary Manross, Mayor

ATTEST:

Sonia Robertson
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

David A. Pennartz
David A. Pennartz, City Attorney

Dave Rodriguez
Dave Rodriguez, General Manager, Economic Vitality

Suzanne M. Welch
Myron Kuklok, Risk Management Director

ACCEPTED AND AGREED TO BY:

Escrow Agent

By

Its


Richard Marsh
Richard Marsh
Vice President

STATE OF ARIZONA)

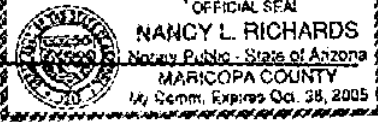
) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of July, 2003, by Bob Kaufman & Victor of Los Arcos Development, LLC, a Delaware limited liability company.


Notary Public

My Commission Expires:

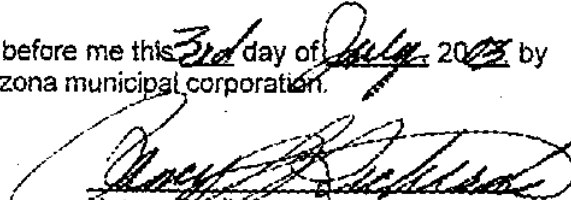


STATE OF ARIZONA)

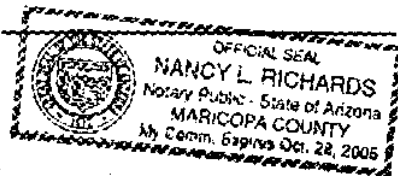
) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of July, 2003 by Mary Manross, Mayor of the City of Scottsdale, an Arizona municipal corporation.


Notary Public

My Commission Expires:



LIST OF EXHIBITS

- A. Boundaries of Los Arcos Redevelopment Area
- B. Los Arcos Redevelopment Plan
- C. Tract Map
- D. Parcel Map
- E. Memorandum of New Legal Descriptions
- F. Conceptual Site Plan
- G. Regulatory Approvals
- H. Declaration
- I. Lienholder Consent Form
- J. Ownership List
- K. Second Closing R-O-W Deed
- L. Parking Lease
- M. Partial Termination Notice Form
- N. Parking Deed
- O. Hazardous Substances Exceptions
- P. Plans Approval Process
- Q. Feature Chart
- R. Insurance and Indemnities Requirements